

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-0265-C - ORDER NO. 2000-792

SEPTEMBER 25, 2000

IN RE: Application of Birch Telecom of the South, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Interexchange and Local Exchange Telecommunications Services within the State of South Carolina.) ORDER) APPROVING) APPLICATION
---	---

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Birch Telecom of the South, Inc. ("Birch" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company's application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1999) and the Regulations of the Public Service Commission of South Carolina.

By letter, the Commission's Executive Director instructed Birch to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Birch complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on August 10, 2000, and the SCTC filed an Amended Petition to Intervene on August 16, 2000. Thereafter, on August 18, 2000, Counsel for SCTC filed with the Commission a Stipulation in which Birch stipulated that it would only seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Birch provided written notice of its intent prior to the date of the intended service. Birch also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Birch agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Birch provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on September 14, 2000, at 11:00 a.m., in the Commission's Hearing Room. The Honorable William Saunders, Chairman, presided. John Beach, Esquire, represented the Company. Jocelyn D. Green, Staff Counsel, represented the Commission Staff.

Rick Tidwell, Vice President, Regulatory Relations for Birch, appeared and offered testimony in support of the Company's application. As Vice President, Regulatory Relations, Mr. Tidwell is responsible for all regulatory affairs and policies at

the state and federal levels. Mr. Tidwell is also responsible for interfacing with the Company's operational groups to ensure that both are aware of regulatory policies, procedures, rules, laws, and proceedings in different states.

Birch is approximately three years old and was formed by three gentlemen who were based in Kansas City, Missouri. Before Birch obtained any customers, they determined they needed a long distance platform and the Company merged with Value Line of Kansas. Birch began as a reseller and has moved toward facilities-based services. The Company most recently began implementing services in a wide geographic range in the states of Kansas, Missouri, Texas, and Oklahoma and the BellSouth region using the unbundled network element platform. According to Mr. Tidwell, this platform is relatively new to BellSouth and CLECs, and it allows telephone companies to rapidly expand into new markets. Birch's business plan is to rapidly expand into new markets geographically so that the Company can cover a large area quickly; the Company's target customer is the small business customer – the customer with anywhere from three, five, or seven lines. The Company will move to switch-based services eventually by using an internet protocol platform and using packet switching to provide both voice and data services in one broadband stream for the Company's small business customers. KKR, an investment firm, owns fifty-one percent of Birch; KKR has given Birch the ability to obtain large amounts of capital as the telecommunications business is a very capital-intensive business.

Upon receiving certification from the Commission, Birch will offer state-of-the-art voice and data services, including local and long distance telephone services, calling

card services – not debit cards--, toll-free numbers, Internet access, Web hosting, integrated voice and data transmission over broadband lines, and customer premises equipment sales and services. Birch intends to install its facilities in cities in South Carolina where it can gain market share; the Company's first wave of cities for installing facilities is Columbia, Spartanburg, and Charleston. Birch will begin offering its services to end-users in the first quarter of 2001. The Company is currently formulating plans to start its collocation project; the collocation project starts approximately three to six months behind the Company's initial market entry. Mr. Tidwell anticipates that Birch will have collocation in South Carolina before the end of 2001. Birch will hire employees in South Carolina to handle its facilities-based services.

Birch's marketing strategy includes one-on-one, person to person marketing. The Company does not utilize telemarketing or market through the mail. Birch intends to "knock on doors" to market its services; its sales force will belong to the Company. This sales force will target business customers only.

Mr. Tidwell also addressed Birch's managerial and technical ability to provide telecommunications services in South Carolina. The Company will rely on the incumbent local exchange carrier and its own technicians to handle technical problems that arise in South Carolina. Mr. David Scott, Chief Executive Officer of the Company, has been in the telecommunications business since 1983. He has a Master's degree in Electrical engineering from the University of Chicago; Mr. Scott began with Sprint Corporation. Mr. Scott then became employed with American Cable Vision; this Company determined in the mid 1980s that they wanted to build a broadband fiber

network for long distance carriers and private line services. Mr. Scott and Mr. Jeffrey Shackelford, Senior Vice President for Customer Care, Operations, and Sales of the Company, founded Birch. Mr. Shackelford's telecommunications experience also began in the mid 1980s. Mr. Gregory Lawhon, is the Company's General Counsel. Mr. Lawhon was a partner with one of the premier law firms in Kansas City for a number of years and specialized in merger acquisitions and regulatory affairs regarding cable television. Mr. Lawhon, according to Mr. Tidwell, has a tremendous amount of experience in the telecommunications area due to his exposure to the cable television industry. Mr. Donald H. Goldman is the Company's Chief Operating Officer; he was previously employed with Sprint for a number of years. Mr. Goldman has handled the infancy projects for Sprint PCS. The Company's Chief Financial Officer is Mr. Brad Moline. Mr. Moline was formerly employed with Covenant Trucking and is responsible for taking Covenant Trucking public and for Covenant Trucking's fast and furious growth.

In addition to utilizing the unbundled network element platform, Birch will use advanced back-office systems. These systems, according to Mr. Tidwell, are very important. These systems are used internally to place orders, track customers and lines, interface with the Bell Operating Companies so that orders are processed and taken care of in a reasonable manner. Birch Telecom will perform its own billing services; if a customer chooses Birch as its local and long distance carrier, the Company's bill will include charges for both of these services on the same bill. Birch's customer service telephone number and name appear on customers' bills. The Company's primary

customer service center is located in Kansas; Birch is currently negotiating a contract for a customer service department in the BellSouth territory. The Company's service centers are open twenty-four hours a day, seven days a week. Birch has completed an interconnection agreement with BellSouth; initially, the Company's underlying carrier will be AT&T's network. In the future, Birch will deploy its own network as the Company moves forward and will build its own ATM-backbone network. The regulatory contact person is Mr. Lawhon.

Birch Telecom of the South is currently authorized to provide its telecommunications services in Kentucky, Georgia, Louisiana, Tennessee, and Florida, with applications pending in North Carolina, Mississippi, and South Carolina. Birch Telecom of Kansas is authorized to provide telecommunications services in Kansas. Birch Telecom of Missouri is certified to provide its services in Missouri, Birch Telecom of Oklahoma is authorized to provide its services in Oklahoma and Birch Telecom of Texas is authorized to provide telecommunications services in Texas. Birch of the Great Lakes is authorized to provide its services in Wisconsin and Indiana and has applications pending in Ohio, Michigan, and Illinois. Birch Telecom has been providing local and long distance telecommunications services for approximately three years. Furthermore, according Mr. Tidwell, Birch Telecom has never had authority denied in any state where it has applied for authority, nor has the Company had authority revoked in any state where it has been granted authority. Additionally, according to Mr. Tidwell, Birch has never been fined, sanctioned, or the subject of an investigation by a state or federal regulatory body.

Regarding the Company's financial ability to provide telecommunications services in South Carolina, Birch will rely on the financial resources of its parent, Birch Telecom, Inc. The Company's last quarter revenues were approximately twenty-eight million dollars for the quarter; however, the Company lost approximately seventeen million dollars during the same quarter. The Company has approximately 200,000 access lines and Birch continues to move into the second tier markets in the Southwestern Bell territory. The Company anticipates that by the end of the year 2001 it will have approximately 100,000 lines in the BellSouth region. Mr. Moline, Birch's Chief Financial Officer, is the financial contact person for the Company.

Birch also requests that the Commission waive some of its regulations. First, Birch requests that the Commission waive the requirement of S.C. Code Ann. Regs. 103-610 (1976), which requires the Company to maintain its books and records within the State of South Carolina. Birch requests that it be allowed to maintain its corporate books and records at its corporate headquarters in Kansas City, Missouri. Secondly, the Company requests a waiver of the requirement that its records be kept according to the Uniform System of Accounts. Birch's financial records are kept according to the Generally Accepted Accounting Principles. Next, Birch requests a waiver of 26 S.C. Code Ann. Regs. 103-631 (1976 and Supp. 1999) so that Birch can make arrangements with BellSouth, the ILEC with which it will be interconnecting, for the names of Birch's customers to be included in the directories published by BellSouth. Finally, Birch requests a waiver of any reporting requirements which, although applicable to ILECs such as BellSouth, are not applicable to Birch because such requirements (1) are not

consistent with the demands of the competitive marketplace, and/or (2) constitute an undue burden on a competitive provider, thereby requiring an inefficient allocation of its limited resources.

Finally, Mr. Tidwell testified Birch has not marketed its services in South Carolina or received revenues from the completion of intrastate calls in South Carolina as of the date of the hearing. Additionally, Birch, as of the date of the hearing, had not provided long distance or local services in South Carolina.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Birch is organized as a corporation under the laws of the State of Delaware and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.
2. Birch wishes to provide local exchange services and interexchange services within the State of South Carolina.
3. The Commission finds that Birch possesses the technical, financial, and managerial resources sufficient to provide the service requested.
4. The Commission finds that Birch's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1999).

5. The Commission finds that Birch will support universally available telephone service at affordable rates.

6. The Commission finds that Birch will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by Birch "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Birch to provide competitive resold and facilities-based intrastate local exchange services only to customers located in the non-rural areas of South Carolina. The terms of the Stipulation between Birch and the SCTC are approved, and adopted as a portion of this Order. Any proposal to provide local exchange service to a customer in a rural incumbent LEC's service area is not included in the instant grant of authority. Further, the Company is granted authority to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. With regard to the interexchange service offerings of Birch, the Commission adopts a rate design which includes only maximum rate levels for each tariff

charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Birch shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. Birch shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 6, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, Birch shall file its revised long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The Company shall file its revised local tariff prior to commencement of operations within South Carolina. The revised tariffs shall be

consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. Birch is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Birch shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Birch changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, Birch shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

9. Birch shall file annual surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at www.psc.state.sc.us/forms. The title of the forms which the Company shall utilize to file

annual surveillance reports with the Commission is "Annual Information on South Carolina Operations For Interexchange Companies and AOS".

10. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Birch to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Birch, shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests

and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Birch shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the "Authorized Utility Representative Information" form which can be located at the Commission's website at www.psc.state.sc.us/forms to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. Birch shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. Birch shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Birch shall keep financial records on an intrastate basis for South Carolina to comply with the annual and gross receipts filings. The "Annual Report for Competitive Local Exchange Carriers" form can be located at the Commission's website at www.psc.state.sc.us/forms. This form shall be utilized by the Company to file annual financial information with the Commission.

14. By its Application, Birch requested waivers from Commission requirements (1) of publishing a directory; (2) of maintaining its books and records

within the State of South Carolina; (3) of any reporting requirements which, although applicable to ILECs such as BellSouth, are not applicable to Birch because such requirements (1) are not consistent with the demands of the competitive marketplace, and/or (2) constitute an undue burden on a competitive provider, thereby requiring an inefficient allocation of its limited resources; and (4) of any record-keeping rules or regulations that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The Commission finds the reasoning behind Birch's requests for waivers of publishing a directory, maintaining its books and records in conformance with the Uniform System of Accounts, and maintaining its records required under the Commission's rules be kept within the State reasonable and hereby grants the waivers of these regulations. However, we deny the Company's request for a waiver of any reporting requirements which, although applicable to ILECs, are not applicable to Birch. We find that this request lacks specificity and the Company can file requests with the Commission in the future for specific waivers of the Commission's regulations. Birch is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2000-0265-C

Re: Application of Birch Telecom of the South, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Interexchange and Local)
Exchange Telecommunications Services in the)
State of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Birch Telecom of the South, Inc. ("Birch Telecom") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Birch Telecom's Application. SCTC and Birch Telecom stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Birch Telecom, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Birch Telecom stipulates and agrees that any Certificate which may be granted will authorize Birch Telecom to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Birch Telecom stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. Birch Telecom stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless

and until Birch Telecom provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Birch Telecom acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Birch Telecom stipulates and agrees that, if Birch Telecom gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Birch Telecom will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Birch Telecom acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Birch Telecom, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Birch Telecom agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Birch Telecom hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 17th day of August, 2000.

Birch Telecom of the South, Inc.:

Gregory C. Lawton,
Senior Vice President

South Carolina Telephone Coalition:

Margaret M. Fox
M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.

Chesnee Telephone Company

Chester Telephone Company

Farmers Telephone Cooperative, Inc.

Ft. Mill Telephone Company

Heath Springs Telephone Company Inc.

Home Telephone Company, Inc.

Lancaster Telephone Company

Lockhart Telephone Company

McClellanville Telephone Company

Norway Telephone Company

Palmetto Rural Telephone Cooperative, Inc.

Piedmont Rural Telephone Cooperative, Inc.

Pond Branch Telephone Company

Ridgeway Telephone Company

Rock Hill Telephone Company

Sandhill Telephone Cooperative, Inc.

St. Stephen Telephone Company

West Carolina Rural Telephone Cooperative, Inc.

Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

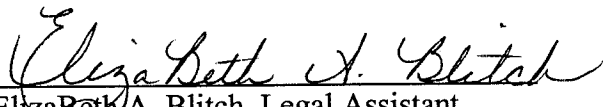
Docket No. 2000-0283-C

Re: Application of Claricom Networks, Inc. d/b/a)
Staples Communications Networks for a)
Certificate of Public Convenience and)
Necessity to Provide Local Exchange)
Telecommunications Services in the State)
of South Carolina)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Valerie M. Furman, Esquire
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037.


ElizaBeth A. Blitch, Legal Assistant
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

August 18, 2000

Columbia, South Carolina